



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: MOP - 175765

PRELIMINARY RECITALS

Pursuant to a petition filed on July 21, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Brown County Human Services regarding Medical Assistance (MA), a hearing was held on August 30, 2016, by telephone.

At the time of hearing, petitioner explained that she also intended to include in this appeal the matter of recovery claim against her husband for the same overpayment. As there was no request for hearing filed in his name the only matter heard was the instant overpayment. Subsequently, Mr. [REDACTED] filed a request for hearing which is designated as Case No. MOP-176532. Hearing on that matter was held on October 4, 2016 and the record from that matter is incorporated in this matter by reference.

The issue for determination is whether the agency met its burden of establishing liability for an overpayment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Sharon Johnson
Brown County Human Services
Economic Support-2nd Floor
111 N. Jefferson St.
Green Bay, WI 54301

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco

Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner was case head of a BC+ case including herself and her husband and two children. As of 6/11/12 petitioner had a duty to report household income exceeding \$3,553.54.
3. Petitioner underwent a MA case renewal review in March 2013. At that time, she reported her income accurately and provided paystubs reflecting income of \$2,756.79 in February 2013. The agency miscalculated income and BC+ was maintained as open with a premium which was less than the premium that would have otherwise been owed if income had been properly calculated.
4. On March 28, 2013 the agency sent a notice informing petitioner that BC+ would remain open with a \$96 premium for the two adults' coverage. The new reporting requirement was stated to be \$2,943.75. The family paid that \$96 premium in May 2013 through December 2013.
5. On July 16, 2016, the agency issued an overpayment notice to petitioner informing petitioner of liability for a MA overpayment of \$834.90 from 5/1/16 to 12/31/13.
6. Petitioner appealed.

DISCUSSION

The Department of Health Services (Department) is legally required to seek recovery of incorrect BCP payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information.

28.1 OVERPAYMENTS.

An "overpayment" occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

BCP Eligibility Handbook (BCPEH), §28.1.

But, it is also clear in the program rules that if the agency is responsible for the error then the overpayment is not recoverable:

28.3 Non-Recoverable Overpayments

Do not initiate recovery for a BC+ overpayment if it resulted from a non-member error, including the following situations:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. **Agency error** (keying error, math error, failure to act on a reported change, etc).
3. Normal prospective budgeting projections based on best available information.

In this case, the agency takes the novel approach that the overpayment was initially caused by the agency worker miscalculating income and determining the premium of \$96 for the couple when it should have been higher. The agency concedes that petitioner properly renewed and provided paystubs and any requested verification. The agency argues, however, that the agency's fault dissolved when a notice was mailed to petitioner informing her that her BC+ was open with the \$96 premium and noted the income budgeted. Thereafter, so the argument goes, even though there was no change in income for the household, the agency asserts that the petitioner was then at fault for not reporting that the agency was using the wrong income for the family. That is, by the mailing of a notice the agency put the affirmative responsibility on petitioner to notice the agency's error. The overpayment in this case would not have occurred but for the agency's error in calculation and in granting or continuing eligibility. The agency's error is the legal cause and the factual cause for petitioner allegedly receiving MA benefits at the lower premium cost.

I also note that the record is devoid of any documentation supporting the agency's assertion of 2013 income. The agency submitted a payroll journal of [REDACTED]'s earned income from [REDACTED] [REDACTED] as well as an employer verification completed by [REDACTED]. But both of those documents detail the 2014 income, not the 2013 income. The only proof of any income in 2013 is the two February 2013 paystubs petitioner submitted with the renewal. I can make no finding that petitioner's income exceeded the reporting limit at any point based on this scant evidence.

In an overpayment case it is the burden of the agency to prove the liability and the correct calculations. The agency has not met its burden.

CONCLUSIONS OF LAW

1. The agency did not establish the fact of an overpayment to petitioner from May 1, 2013 to December 31, 2013.
2. The overpayment in this case, if any, was caused by agency error.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency with direction to reverse the overpayment claim and cease any collection efforts. Any sum already recouped shall be refunded to petitioner. These actions must be completed within 10 days.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 7th day of October, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on October 7, 2016.

Brown County Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability